
COMMONWEALTH OF VIRGINIA



OFFICE OF THE GOVERNOR

Executive Order 73

DECLARATION OF A STATE OF EMERGENCY FOR THE COUNTIES OF TAZEVELL AND RUSSELL DUE TO THE EFFECTS OF SIGNIFICANT FLOODING

On May 25, 2004 I verbally declared a state of emergency to exist for the counties of Tazewell and Russell based on information of damages caused by heavy rains and flash flooding that began on May 24, 2004 and are continuing. Forecasts indicate that the current weather pattern could cause additional heavy rains, flooding and high winds in several parts of the Commonwealth.

The health and general welfare of the citizens of the Commonwealth required that state action be taken to help alleviate the conditions that are resulting from this situation. State agencies have responded with assistance to local governments and to the citizens of Tazewell County and Russell County. I found that the potential effects of these floods constituted a natural disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the *Code of Virginia*.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the *Code of Virginia*, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by §44-75.1 of the *Code of Virginia*, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued May 25, 2004, wherein I proclaimed that a state of emergency exists and directed that appropriate assistance be rendered by agencies of both state and local governments to assist people in harm's way, and to alleviate any conditions resulting from significant flooding, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions insofar as possible. Pursuant to §44-75.1.A.3 and A.4 of the *Code of Virginia*, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to assist in

providing such aid. This shall include Virginia National Guard assistance to the Virginia State Police to direct traffic, provide security, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in §44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

- A. The implementation by agencies of the state and local governments of Volume 1 (Basic Plan) and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.
- B. Activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT). Furthermore, I am directing that the VEOC and VERT coordinate state operations in support of potential affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.
- C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to §44-146.18 of the *Code of Virginia*.
- D. The evacuation of areas threatened or stricken by flooding or other affects of the storms. Following a declaration of a local emergency pursuant to § 44-146.21 of the *Code of Virginia*, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 (1) of the *Code of Virginia*, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both

where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

- E. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact, and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the *Code of Virginia*, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, §44-146.28:1 of the *Code of Virginia*.
- F. The authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§32.1-111.1 et seq.) of Chapter 4 of Title 32.1, of the *Code of Virginia*, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.
- G. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in §44-146.28 (b) of the *Code of Virginia*. Section 44-146.24 of the *Code of Virginia* also applies to the disaster activities of state agencies.
- H. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), amateur radio operators, volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency

Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of §44-146.23 (a) of the *Code of Virginia*, in the performance of their specific disaster-related mission assignments.

The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations and in alleviating the human suffering and damage to property.
2. Pursuant to §52-6 of the *Code of Virginia*, I authorize and direct the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers. These police officers shall have the same powers and perform the same duties as the regular State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by §52-7 of the *Code of Virginia* shall be provided for them at the expense of the Commonwealth.
3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by §44-78.1 of the *Code of Virginia* and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.
4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:
 - (a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,
 - (b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type

benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the *Code of Virginia*, and subject to the availability of future appropriations that may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The costs incurred by the Department of Military Affairs and the Virginia Defense Force in performing these missions shall be paid from state funds.

The following conditions apply to service by the Virginia Defense Force:

1. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;
2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;
3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the *Code of Virginia*; and
4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in §44-146.28 of the *Code of Virginia*, other than costs defined in Item 5 of

the paragraphs above pertaining to the Virginia National Guard and the Virginia Defense Force, in performing these missions shall be paid from state funds.

This Executive Order shall be effective May 24, 2004, and shall remain in full force and effect until June 30, 2005, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 25th day of May 2004.

Mark R. Warner, Governor

Attest: _____
Secretary of the Commonwealth